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**BEFORE THE ARIZONA CORPORATION COMMISSION**

IN THE MATTER OF THE APPLICATION  
OF ARIZONA WATER COMPANY, AN  
ARIZONA CORPORATION, TO EXTEND  
ITS EXISTING CERTIFICATE OF  
CONVENIENCE AND NECESSITY IN THE  
CITY OF CASA GRANDE AND IN PINAL  
COUNTY, ARIZONA.

Docket No. W-01445A-06-0199

IN THE MATTER OF THE APPLICATION  
OF PALO VERDE UTILITIES COMPANY  
FOR AN EXTENSION OF ITS EXISTING  
CERTIFICATE OF CONVENIENCE AND  
NECESSITY.

Docket No. SW-03575A-05-0926

IN THE MATTER OF THE APPLICATION  
OF SANTA CRUZ WATER COMPANY FOR  
AN EXTENSION OF ITS EXISTING  
CERTIFICATE OF CONVENIENCE AND  
NECESSITY.

Docket No. W-03576A-05-0926

**ARIZONA WATER COMPANY'S RESPONSE TO GLOBAL'S MOTION TO  
VACATE CONSOLIDATION AND ALTERNATIVE MOTION TO SEVER**

Arizona Water Company hereby responds in opposition to the Motion to Vacate Consolidation and Alternative Motion to Sever filed by Santa Cruz Water Company, LLC, Palo Verde Utilities Company, LLC, Global Water-Santa Cruz Water Company and Global Water-Palo Verde Utilities Company (collectively, "Global"). For the reasons that follow,

1 and also based upon the arguments set forth in Arizona Water Company's response to  
2 Global's motion to dismiss also filed this date, these motions should be denied.

3 **I. INTRODUCTION.**

4 Global's motions cannot withstand scrutiny under the very standards Global relies  
5 upon in its memorandum of law. The applications that Global seeks to sever into separate  
6 hearings involve two applicants for a Certificate of Convenience and Necessity ("CCN") for  
7 much of the same territory. If the applications are heard separately, a decision will be  
8 rendered on one application for territory sought in another application, without the benefit of  
9 reviewing the competing applicant's application. All of the relevant factors under case law  
10 favor consolidation in this case and disfavor severance of the applications. ALJ Kinsey  
11 acted prudently and in accordance with proper Commission procedure and Arizona law in  
12 ordering consolidation, and Global's motion to reconsider that ruling in the guise of a  
13 "motion to vacate consolidation and alternative motion to sever" should be denied.

14 **II. ADMINISTRATIVE LAW JUDGE KINSEY'S CONSOLIDATION ORDER**  
15 **SHOULD NOT BE RECONSIDERED AND REVERSED, AS THE**  
16 **COMPETING APPLICATIONS CONTAIN COMMON QUESTIONS OF**  
17 **LAW AND FACT.**

18 Under Rule 42(a), *Arizona Rules of Civil Procedure* (incorporated by Commission  
19 rule into this proceeding), actions may be consolidated when they involve a "common  
20 question of law or fact." Courts have broad discretion to consolidate cases "so that the  
21 business of the courts may be dispatched with expedition and economy while providing  
22 justice to the parties." 9 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, *FEDERAL*  
23 *PRACTICE AND PROCEDURE* § 2381 (2d ed. 1994). Consolidation is ordinarily proper  
24 whenever "the subject matter involved and relief demanded in the different suits make it  
25 expedient for the court to determine all of the issues involved and adjudicate the rights of  
26 the parties by hearing the suits together." 1A C.J.S. *Actions* § 259.

27 Consolidation of two or more actions serves many purposes, including: 1)  
28 convenience and judicial economy, 2) avoiding a multiplicity of suits, 3) clearing congested  
dockets and 4) avoiding the possibility of inconsistent results. *Id.* Consolidation is favored

1 when the cases involve overlapping parties, as here. 8 JAMES WM. MOORE, MOORE'S  
2 FEDERAL PRACTICE, § 42.10[6][b]. Consolidation is not barred simply because cases are not  
3 identical or contain some different questions or theories; the critical consideration is  
4 "whether there is at least one common question . . ." 9 WRIGHT & MILLER at § 2384; *see*  
5 *also Schreiber Trucking Co. v. Rail Trailer Co.*, 194 F.Supp. 164, 165 (E.D.P.A. 1961).  
6 Commentator Moore states that "[s]uch similarity is not, however, a requirement for  
7 consolidation and a wide range of actions may be consolidated so long as they present  
8 common issues of law or fact and the consolidation is deemed useful." MOORE at §  
9 42.10[1][b].

10 This is exactly such a case. Ignoring these standards, Global confuses its reasons  
11 why it believes it should be awarded its requested CCN (which have nothing to do with  
12 whether the cases should be consolidated) with the common issues of fact and law. The  
13 more Global argues that it is a more fit provider of service than Arizona Water Company,  
14 the more it makes the case for consolidation so that these issues can be considered in one  
15 proceeding, as Judge Kinsey already properly decided. For example, Global pontificates  
16 about the requests for service it has collected through its financing agreements<sup>1</sup>, its  
17 application to provide wastewater service as well as water service, and the number of  
18 interventions in this case. Not only are these facts misrepresented (as addressed in more  
19 detail in Arizona Water Company's response to Global's motion to dismiss filed this date),  
20 but Global must make its case through appropriate testimony and evidence before the  
21 Commission during the hearing on the certificate applications, not in unsupported  
22 allegations in early procedural motions. These arguments are not valid reasons for ALJ  
23 Kinsey to reconsider and reverse her earlier ruling. This motion is nothing more than a  
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25 <sup>1</sup> Global's unregulated entities' questionable financing scheme using the so-called  
26 "Infrastructure Coordination and Finance Agreements" is already the subject of a  
27 Formal Complaint Proceeding (Docket No. W-01445A-06-0200) and a Generic  
28 Docket investigation (Docket No. W-00000C-06-0149), as described in Arizona  
Water Company's response to Global's motion to dismiss filed this date.

1 procedural maneuver by Global to present its case to the Commission before Arizona Water  
2 Company is afforded an opportunity to provide its own evidence and testimony  
3 demonstrating why it should be granted the CCN. The public interest cannot be served by  
4 such a race to see who can get their CCN first.  
5

6 **A. Both Parties Are Seeking To Provide Much Of The Same Territory With**  
7 **The Same Service, And The Dockets Involve The Same Questions And**  
8 **Facts.**

9 ALJ Kinsey's consolidation order was clearly proper and should be upheld. These  
10 dockets involve the same issues and facts, and the parties have both applied to provide  
11 service to a substantially similar area. In fact, the applicants are applying to provide water  
12 utility service in almost 20,000 acres of the *exact* same territory. Both parties are applying  
13 to provide water service, and both parties have the capability of facilitating wastewater  
14 service through their respective partners or affiliates.<sup>2</sup> Moreover, both applications involve  
15 the same questions and facts because they both address issues such as water supply and  
16 quality, conservation, rates, infrastructure planning, and a host of other common issues.

17 **B. Judicial Economy And The Commission's Interest In Consistent Results**  
18 **Favors Consolidation.**

19 As noted above, the consolidated dockets involve competing applications seeking to  
20 service nearly 20,000 acres of the same territory. If ALJ Kinsey's consolidation order is  
21 overturned, the applications of Arizona Water Company and Global will proceed through  
22 the Commission separately. Duplication of effort and expense will abound. The  
23 Commission will not have the benefit of reviewing and weighing each application  
24 concurrently. This will make the Commission's decision more difficult and would likely  
25 lead to inconsistent results, and would deprive the Commission of the ability to evaluate the  
26 applications based on the same evidentiary record. Finally, without consolidation, the

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27 <sup>2</sup> See Arizona Water Company's agreement with Southwest Water Company attached  
28 as Exhibit A.

Commission could be unintentionally motivating Global further to rush its application, hoping to be heard first by the Commission before the other Company is awarded a CCN.

**C. Corporation Commission Precedent Favors Consolidation.**

The Commission has frequently consolidated matters involving similar parties and territory, but also encompassing some differing services and territory. *See In the Matter of the Application of Woodruff Water Co.*, Docket No. W-04264A-04-0438, Procedural Order dated November 4, 2004 (consolidation granted where competing applicant's requested territory had commonality but also differed, and one party served water while the other served water and wastewater); *In the Matter of the Application of Beaver Dam Water Co.*, Docket No. W-03067A-04-0216, Procedural Order dated April 29, 2005 (consolidation granted where requested territory had commonality but also differed, and one party served only water while the other served water and wastewater); *In the Matter of the Application of Circle City Water Co., L.L.C.*, Docket No. W-03510A-05-0145, Procedural Order dated April 4, 2005 (application for hook-up fee tariff consolidated with application for extension of CCN); *In the Matter of the Application of Green Acres Water L.L.C.*, Docket No. W-20430A-05-0839, Procedural Order dated March 2, 2006 (water service application consolidated with sewer service application).

Consolidation orders are rarely contested in the Commission. In fact, Arizona Water Company examined every consolidation order filed in the last three years and none has been contested. Competing applicants generally rely on the merits of their applications to secure a CCN, rather than resorting to challenging consolidation orders in the hope of winning a race to have their application heard by the Commission first. Global's efforts to play dice with the Commission's orderly process and to exalt procedure over substance should not be rewarded by reconsideration and reversal of the well-considered consolidation order in this docket.

This case is procedurally similar to the *Woodruff* consolidation. In *Woodruff*, two competing applicants proposed to provide service to a new development, but one of the

1 applications also included different and expanded territory in its application. [Decision No.  
2 68453 at 2.] Additionally, one of the applicants proposed to provide water and wastewater  
3 service, while the other proposed to provide only water service. *Id.* On November 4, 2004,  
4 by Procedural Order, the two competing applications were consolidated for purposes of  
5 hearing, and the matter proceeded to a decision on both applications at the same time. *Id.*

6 In this case, like *Woodruff*, there are two competing applicants. Both seek to provide  
7 water to nearly 20,000 acres of the same territory. Both are able to offer wastewater  
8 services through their partners or corporate affiliates. The only difference in this case is that  
9 one applicant, Global, is seeking to challenge the Commission's consolidation order, hoping  
10 to have its application heard first and separate from the competing application. Thus, the  
11 competing applicants clearly have much more in common than the required threshold for  
12 consolidation, which is sharing one common question. WRIGHT & MILLER § 2384; *see also*  
13 *Schreiber Trucking Co. v. Rail Trailer Co.*, 194 F.Supp. 164, 165 (E.D.P.A. 1961).

14 **D. Global's Motion Lacks Support.**

15 Global relies on only one Commission decision, *Water Utility of Greater Tonopah*, to  
16 support its argument that ALJ Kinsey's consolidation order was wrong. Decision No.  
17 64890. But *Greater Tonopah* is completely distinguishable from the present case. In  
18 *Greater Tonopah*, three different entities sought to have financing applications approved  
19 and their cases consolidated. [Decision No. 64890 at 1 n.1] Two of the applicants sought  
20 financing approval for pipelines, whereas the other applicant wanted financing for the  
21 construction of a filtration system. *Id.* The Commission and Staff agreed that consolidation  
22 was appropriate for the pipeline applications, but found the filtration system application  
23 should be heard separately. The Commission based its decision on the fact that the filtration  
24 system application was a different type of system and had no similarities with the pipeline  
25 applications. *Id.* Notably, the Commission consolidated the pipeline applications despite  
26 the fact that the two companies were seeking financing for different pipelines. *Id.*

1 This docket does not involve financing approval. In this case, both applicants are  
2 applying to provide similar and overlapping territory with the same water utility service.  
3 Thus, Global has not found a single Commission decision supporting its request to  
4 reconsider and overturn ALJ Kinsey's consolidation decision. Rather, each of the factors  
5 favoring consolidation are present in this case. The applications involve rival parties  
6 seeking to serve a substantially similar territory. It will be much more convenient and  
7 economical for the Commission to hear the competing applications at the same time.  
8 Additionally, if the Commission hears the applications in a consolidated docket, as the ALJ  
9 has already ruled, the Commission's docket will be less congested, the Commission will  
10 have the chance to properly weigh the merits of each application and which utility will best  
11 serve the public interest, and the possibility of inconsistent results will be avoided.  
12 Consequently, ALJ Kinsey's consolidation order must be upheld.

13 **III. CONSOLIDATION WILL NOT CAUSE UNDUE PREJUDICE,**  
14 **INCONVENIENCE, DELAY OR EXPENSE, BUT SEVERANCE WOULD.**

15 Bifurcation and separate trials are "not the normal course of events, and a single trial  
16 will usually be more expedient and efficient." 8 JAMES WM. MOORE, MOORE'S FEDERAL  
17 PRACTICE, § 42.20[4][a]. The factors courts examine to determine if bifurcation or separate  
18 trials are appropriate include whether: 1) the issues are significantly different from one  
19 another, 2) the issues are to be tried before a jury or a court, 3) the posture of discovery on  
20 the issues favors a single trial or bifurcation, 4) the documentary and testimonial evidence  
21 on the issues overlap and 5) the party opposing bifurcation will be prejudiced if it is granted.  
22 *Id.* Not one of these factors favoring consolidation applies here. In any event, if the cases  
23 were severed for hearing, each of the applicants would likely intervene in the other's  
24 proceeding, compounding effort and expense and unreasonably burdening Commission and  
25 Staff resources, and increasing the chances of inconsistent results.

26 Global will not suffer prejudice if ALJ Kinsey's consolidation order is upheld.  
27 Bifurcation and separate hearings are only appropriate when information contained in one of  
28 the claims or actions will prejudice the trier of fact against one of the parties. *See id.* at §

1 42.20[4][c]. In this case, the competing applications do not implicate prejudicial  
2 information within the meaning of this authority. Here, Global's only prejudice is not  
3 having the chance to present its application in a vacuum without the competing applicant  
4 present, which is not legal prejudice at all.

5 Here, consolidation is also favored by the need for discovery and the need for  
6 documentary and testimonial evidence on similar issues. Each party in the case is seeking to  
7 show the same decision-making body—the Commission—that the public interest favors  
8 granting its application. Consequently, discovery between these applicants and a  
9 consolidated hearing and record, where the applicants have the opportunity to present the  
10 merits of their applications, will both contribute to the Commission's ability to determine  
11 which application best serves the public interest, including the interests of the customers  
12 who ultimately will reside in and receive water service in the subject territory.

13 **IV. ARIZONA WATER COMPANY'S APPLICATION IS INDEPENDENTLY**  
14 **VIABLE.**

15 Arizona Water Company's application to extend its existing CCN is independently  
16 viable. Arizona Water Company has submitted its application and has been providing Staff  
17 with additional data to meet sufficiency requirements. Arizona Water Company fully  
18 responded to Staff's insufficiency letter on July 7, 2006, and that response was docketed in  
19 this proceeding.

20 Global appears to be arguing, for the third time, that Arizona Water Company's  
21 application is insufficient and should therefore be dismissed. As more fully set forth in  
22 Arizona Water Company's response to Global's motion to dismiss in this docket and  
23 Arizona Water Company's response to Global's motion to dismiss in Docket No. W-  
24 01445A-06-0200, dismissal is improper. It is the applicant, Staff and the Commission who  
25 work together to ensure that the application meets sufficiency requirements, and the  
26 competing applicant has no procedural standing or right to object to the merits of its  
27 competitor's application until the appropriate time, in this case a consolidated hearing to  
28 determine who should be awarded the CCN. Global's third attempt to present why it



1 believes its application is superior before a hearing takes place or any evidence is presented  
2 should be rejected, and ALJ Kinsey's consolidation order should stand.

3 **V. SEVERANCE IS INAPPROPRIATE FOR THE SAME REASONS**  
4 **CONSOLIDATION IS APPROPRIATE.**


5 Similar to consolidation, under Rule 42(b), *Arizona Rules of Civil Procedure*, cases  
6 may be severed and separate trials ordered in furtherance of convenience and to avoid  
7 prejudice. But as more fully set forth above, it is consolidation (not severance) of the  
8 applications that promotes convenience. Both applications cover similar territory and  
9 involve rival parties, so judicial economy and convenience will be accomplished by a  
10 consolidated hearing. Additionally, Global will suffer no legal prejudice from the challenge  
11 of having to withstand scrutiny at the same time the Commission considers Arizona Water  
12 Company's application.

13 **VI. CONCLUSION.**

14 For the foregoing reasons, Global's motion to vacate consolidation and alternative  
15 motion to sever should be denied in its entirety, and this matter should be set for a  
16 consolidated hearing at the appropriate time.

17 RESPECTFULLY SUBMITTED this 17th day of July, 2006.

18 BRYAN CAVE LLP

19  
20 By 

21 Steven A. Hirsch, #006360

22 Rodney W. Ott, #016686

23 Two N. Central Avenue, Suite 2200

24 Phoenix, AZ 85004-4406

25 Attorneys for Arizona Water Company  
26  
27  
28



1 **COPY** of the foregoing mailed  
2 this 17th day of July, 2006 to:

3 Michael W. Patten, Esq.  
4 Roshka DeWulf & Patten, PLC  
5 One Arizona Center  
6 400 E. Van Buren St., Suite 800  
7 Phoenix, AZ 85004  
8 Attorneys for Applicants  
9 Santa Cruz Water Company, L.L.C.  
10 and Palo Verde Utilities Company, L.L.C.

11 Jeffrey W. Crockett, Esq.  
12 Marcie Montgomery, Esq.  
13 Snell & Wilmer LLP  
14 One Arizona Center  
15 400 East Van Buren Street  
16 Phoenix, Arizona 85004

17 Kenneth H. Loman  
18 Manager  
19 KEJE Group, LLC  
20 7854 West Sahara  
21 Las Vegas, Nevada 89117

22 Craig Emmerson, Manager  
23 Anderson & Val Vista 6, LLC  
24 8501 North Scottsdale Road, Suite 260  
25 Scottsdale, Arizona 85253

26 Brad Clough  
27 Anderson & Barnes 580 LLP  
28 Anderson & Miller 694, LLP  
8501 North Scottsdale Road, Suite 260  
Scottsdale, Arizona 85253

Phillip J. Polich  
Gallup Financial, LLC  
8501 North Scottsdale, #125  
Scottsdale, Arizona 85253

27  
28 